

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

STEVEN RYAN VOLNER,

Plaintiff,

v.

JASON LEWIS, et al.,

Defendants.

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No. 1:21-cv-00054-NAB

MEMORANDUM AND ORDER

This matter comes before the Court on plaintiff's motion for leave to proceed in forma pauperis on appeal, his motion to file an amended complaint, and his motion to appoint counsel. (Docket No. 13; Docket No. 14; Docket No. 15). For the reasons discussed below, the motions will be denied.

Background

Plaintiff is a self-represented litigant who is currently incarcerated at the South Central Correctional Center in Licking, Missouri. On April 8, 2021, he filed a prisoner civil rights complaint pursuant to 42 U.S.C. § 1983. (Docket No. 1). Because plaintiff was proceeding in forma pauperis, the Court reviewed his complaint under 28 U.S.C. § 1915. Based on that review, the Court dismissed plaintiff's case without prejudice on August 30, 2021. (Docket No. 9).

On November 5, 2021, the Court received from plaintiff a notice of appeal, a motion for leave to proceed in forma pauperis on appeal, an amended complaint, and a motion to appoint counsel. (Docket No. 12; Docket No. 13; Docket No. 14; Docket No. 15). The notice of appeal and motion for leave to proceed in forma pauperis on appeal were both dated September 9, 2021. The amended complaint and the motion to appoint counsel were both dated October 26, 2021.

Motion for Leave to Proceed in Forma Pauperis on Appeal

Plaintiff has filed a motion for leave to proceed in forma pauperis on appeal. (Docket No. 13). When this Court dismissed plaintiff's case, it certified in writing that an appeal would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3) (providing that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith"). It is not apparent that plaintiff now seeks appellate review of any issue that is not frivolous. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962) (explaining that "good faith" is "judged by an objective standard," and that it is "demonstrated when [plaintiff] seeks appellate review of any issue not frivolous"). The Court will therefore deny the motion.

Motion to File Amended Complaint and Motion for Appointment of Counsel

Plaintiff has filed an amended complaint on a Court-provided form. (Docket No. 14). The Court has construed this as a motion for leave to file an amended complaint. Along with the complaint, he filed a motion for appointment of counsel. (Docket No. 15). Both the amended complaint and the motion to appoint counsel are dated October 26, 2021, which is *after* the date on his notice of appeal.

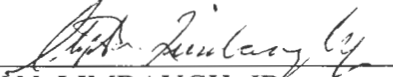
Once a case has been appealed, the issues before the appellate court should not be undermined or altered. *Liddell by Liddell v. Board of Educ. of City of St. Louis*, 73 F.3d 819, 822 (8th Cir. 1996). "The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Because plaintiff has filed an appeal challenging the dismissal of his complaint, his motion for leave to file an amended complaint and his motion for appointment of counsel must be denied.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis on appeal (Docket No. 13) is **DENIED**. *See* 28 U.S.C. 1915(a)(3).

IT IS FURTHER ORDERED that plaintiff's motion for leave to file an amended complaint (Docket No. 14) and motion for appointment of counsel (Docket No. 15) are **DENIED**.

Dated this 9th day of November, 2021.



STEPHEN N. LIMBAUGH, JR.
SENIOR UNITED STATES DISTRICT JUDGE